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11 Attorneys for Defendant
12 OCWEN LOAN SERVICING, LLC

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15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17
18 JAMES LINNA and CARMEN C.
19 BOLGER-LINNA,

20 Plaintiffs,

21 v.

22 OCWEN LOAN SERVICING, LLC,
23 and DOES 1 through 10, inclusive,

24 Defendants.

25 Case No. '15CV2239 W JLB

26 (San Diego County Superior Court Case
27 No. 37-2015-00024162-CU-BT-CTL)

28 **NOTICE OF REMOVAL OF CIVIL
ACTION BY DEFENDANT OCWEN
LOAN SERVICING, LLC,
PURSUANT TO 28 U.S.C. §§ 1331,
1441, and 1446**

[FEDERAL QUESTION]

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1 TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
2 COURT, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, AND TO
3 PLAINTIFFS JAMES LINNA AND CARMEN C. BOLGER-LINNA, AND
4 PLAINTIFFS' ATTORNEYS OF RECORD:

5 PLEASE TAKE NOTICE that Defendant Ocwen Loan Servicing, LLC
6 ("Ocwen") removes the above-referenced action from the Superior Court of the
7 State of California, for the County of San Diego, Case No. 37-2015-00024162-CU-
8 BT-CTL, to the United States District Court, for the Southern District of California.
9 Federal jurisdiction of this action is proper on the basis of federal question under
10 28 U.S.C. sections 1331 and 1441(c). Ocwen removes this action on the following
11 grounds:

12 **Timeliness Of Removal**

13 1. On September 9, 2015, Plaintiffs James Linna and Carmen C.
14 Bolger-Linna (collectively, "Plaintiffs") filed a First Amended Complaint in the
15 Superior Court of the State of California, for the County of San Diego, styled *James*
16 *Linna and Carmen C. Bolger-Linna, Plaintiffs v. Ocwen Loan Servicing, LLC, et al.*,
17 *Defendants*, Case No. 37-2015-00024162-CU-BT-CTL ("State Court Action"). A
18 true and correct copy of the First Amended Complaint, filed in the San Diego
19 County Superior Court, is attached to this Notice as **Exhibit A**.

20 2. The First Amended Complaint alleges causes of action for:
21 (1) Violation of Rosenthal Fair Debt Collection Practices Act; (2) Violation of Real
22 Estate Settlement Procedures Act; (3) Violation of Business & Professions Code
23 Section 17200; (4) Negligence; (5) Declaratory Relief; and (6) Intentional Infliction
24 of Emotional Distress.

25 3. Ocwen received a copy of the First Amended Complaint by email on
26 September 9, 2015.

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1 4. Ocwen filed and served its Answer to the First Amended Complaint in
2 the San Diego County Superior Court on September 25, 2015. A true and correct
3 copy of the Answer is attached to this Notice as **Exhibit B**.

4 5. Attached as Exhibit C to this Notice is a true and correct copy of all
5 pleadings, process, and orders served in this action at the time of removal.

6 6. This Notice is timely as it is filed within thirty days after receipt by
7 Ocwen of the First Amended Complaint, and within thirty days of Ocwen
8 ascertaining the case is removable by the assertion of a new claim in the First
9 Amended Complaint, for violation of the Real Estate Settlement Procedures Act,
10 that Plaintiffs did not assert in the original Complaint. *See* 28 U.S.C. § 1446(b).

11 7. The First Amended Complaint also names as defendants “DOES 1
12 through 10.” Ocwen is informed and believes and on that basis alleges none of the
13 fictitiously-named defendants has been served with a copy of the First Amended
14 Complaint. Therefore, the fictitiously-named defendants are not parties to the
15 above-captioned action and need not consent to removal. *See* 28 U.S.C.
16 § 1441(b)(1); *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980)
17 (“Does” defendants need not be joined in a removal petition).

Federal Question

19 8. This Court has original jurisdiction over the State Court Action under
20 28 U.S.C. § 1331.

21 9. In the First Amended Complaint, Plaintiffs allege violations of the Real
22 Estate Settlement Procedures Act, 12 U.S.C. §§ 2605, *et seq.* (“RESPA”) (Ex. A,
23 FAC, ¶¶ 66-73).

24 10. Because this Court has original jurisdiction, Ocwen may remove the
25 State Court Action pursuant to 28 U.S.C. § 1441(a) and (c).

26 11. This Court is the appropriate venue for removal under 28 U.S.C.
27 § 1446(a). The State Court Action was pending before the Superior Court for the
28 County of San Diego. This Court is the United States District Court for the “district

1 and division embracing the place where the action was pending.” 28 U.S.C.
2 § 1446(a).

3 12. This Court also supplemental jurisdiction over Plaintiffs' state law
4 claims because they "are so related to the [federal] claims . . . that they form part of
5 the same case or controversy . . ." 28 U.S.C. § 1337.

Pleadings And Process

7 13. Parties: Ocwen files this Notice of Removal on its own behalf.

8 14. Pleadings: Ocwen filed a response to the First Amended Complaint on
9 September 25, 2015. *See Exhibit B.*

10 15. Proper Court: Removal to this Court is proper under 28 U.S.C.
11 section 1441(a) because the Superior Court of California, in and for the County of
12 San Diego, is geographically located within this Court's district and division.

13 16. Notice: Ocwen is serving a copy of this Notice of Removal on all
14 adverse parties and filing a copy with the clerk of the state court pursuant to
15 28 U.S.C. § 1446(d). A true and correct copy of the Notice to Adverse Parties and
16 State Court of Removal is attached to this Notice as **Exhibit D**.

17 17. Signature: This Notice of Removal is signed pursuant to Rule 11 of the
18 Federal Rules of Civil Procedure. *See* 28 U.S.C. § 1446(a).

18. Jury Demand: Plaintiffs do not demand a jury trial in the First
Amended Complaint.

21 19. By removing on the basis of federal question, Ocwen does not concede
22 or make any admissions relating to the merit and/or value of Plaintiffs' allegations,
23 claims or damages. Ocwen denies the material allegations contained in the
24 Complaint, generally and specifically.

25 20. WHEREFORE, Ocwen respectfully requests the State Court Action be
26 removed from the state court in which it was filed to the United States District
27 Court, in and for the Southern District of California, and further requests that this

28 |||

1 Honorable Court issue all necessary orders and process and grant such other and
2 further relief as in law and justice Ocwen may be entitled to receive.

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4 Dated: October 7, 2015

Sean D. Muntz
Katherine S. Walker
BRYAN CAVE LLP

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7 By: /s/ Katherine S. Walker
Katherine S. Walker
8 Attorneys for Defendant
9 OCWEN LOAN SERVICING, LLC

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